



**Business Law Reform and
Alternative Dispute Resolution
Development**

Under the USAID/Madagascar Legal, Regulatory and
Judicial Reform Activity
USAID contract No. 623-C-00-98-00029-00

**Madagascar Participation & Poverty (P&P) Project
Legal, Regulatory, Judicial Reform Activity**

July 1, 1999 – September 30, 1999

**Quarterly Performance Monitoring Report
(Fifth Quarter)**

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I. CONTRACTOR'S REPORT

A. INTRODUCTORY NOTE

ARD/Checchi intended to include a table in section I.B.5 describing the significance to the overall business law reform effort in Madagascar of the reformed laws and decrees on which we have provided commentary, along with an analysis of the extent to which the final versions of those laws and decrees utilized our recommendations. Unfortunately, the consultant responsible for preparing this table has not yet done so. ARD/Checchi regrets this omission and will provide an addendum to this report as soon as this material becomes available.

B. NARRATIVE

1. Background

The USAID-funded Madagascar Participation & Poverty (P&P) Project Legal, Regulatory, Judicial Reform Activity, Commercial Law Reform and Alternative Dispute Resolution Components was awarded to the joint venture of ARD, Inc. and Checchi and Company Consulting, Inc. (ARD/Checchi). The effective date of this 40-month contract is June 1, 1998.

The overall objective of the project is to strengthen Madagascar's legal system in the area of business law reform and alternative dispute resolution (ADR). Specific activities under the business law reform and ADR components include: (i) a comprehensive review of existing ADR legislation and legislation in four areas of business law (company, finance, labor, and property); (ii) drafting reform legislation in collaboration with government experts; (iii) training members of the legal and judicial corps in business law and ADR reforms; (iv) improving awareness of public-and private-partner stakeholders of the important benefits of legal reform; (vi) supporting the establishment of an arbitration body; and (vii) establishing a monitoring system to track business law reform and ADR activities undertaken throughout the life of the project.

2. Expected Results

The inter-related activities listed above fall under the Mission Goal of *Reduced Poverty*. There are three components within that Goal, two Strategic Objectives (SO) and one Special Program Objective (SPO): SO2, *Smaller, Healthier Families*; SO3, *Biologically-Diverse Ecosystems Conserved in Priority Conservation Zones*; and the SPO, *Improved Environment for Private Initiative*.

The ARD/Checchi contract falls under the SPO, *Improved Environment for Private Initiative*, which has two Intermediate Results:

- IR#1.1, *Improved Legal, Policy and Financial Conditions for Investment and Trade*
- IR#1.2, *More Informed and Responsive Public Participation in Economic and Legal Issues*

IR#1.1 contains three Sub-Intermediate Results (Sub-IRs):

- IR#1.1.1, *More Conducive Legal, Regulatory, and Judicial Framework for Business*
- IR#1.1.2, *Expanded Access to Financial Services*
- IR#1.1.3, *Improved Investment and Trade Regime*

IR#1.2 contains two Sub-IRs:

- IR#1.2.1, *Improved Public Information and Dialogue*
- IR#1.2.2, *Improved Economic Analysis for Decision-Making*

ARD/Checchi's business law reform and the ADR systems activities contribute to USAID/Madagascar IR #1.1, and in varying degrees to all three of its Sub-IRs. In addition, to a certain extent these activities also contribute to Sub-IR #1.2.1.

3. Fifth Quarter Activities

The Fifth Quarter of the contract coincided with the Malagasy vacation period as well as annual and home leaves for the principal counterparts within USAID/Madagascar. Thus, there were no contract activities in July or August.

At the end of August, Thomas R. Reynders, the Law Development Advisor, arrived in Antananarivo and participated in meetings with USAID, with host government counterparts and with ARD/Checchi's local partner, JURECO, to review contract progress to date and to prepare the Second Year Work Plan. Mr. Reynders also met with the local ADR committees formed in Tamatave and Antsirabe during the Fourth Quarter. In meetings with the CTO, the CRDA, the *Cellule technique*, JURECO and others, ARD/Checchi formulated the broad outlines for completing all projected contract activities within the duration of the contract.

Mr. Don Zimmerman returned to Antananarivo in mid-September to complete his assignment to provide technical assistance to the Labor Directorate of the Ministry of Civil Service, Labor and Social Welfare in its efforts to reform the Malagasy Labor Code. This assignment is scheduled for completion during October 1999.

The following table shows those activities defined as milestones under the Second Year Work Plan that were completed during the Fifth Quarter (July 1–September 30, 1999):

1.2.01	Second Year Work Plan for Business Law Reform Component
1.2.02	First Annual Report (Business Law Reform)
1.2.03	Sixth Month Review with COTR (Business Law Reform)
2.2.01	Second Year Work Plan for ADR Component
2.2.02	First Annual Report (ADR)
2.2.03	Sixth Month Review with COT (ADR)

4. Levels of Effort Provided per CLIN

a. Fifth Quarter

CLIN #	Max Day s	SOW/ Work Order	Description of Work Order	Consultant Name	# of Days
0001-1 U.S.-Finance	125	11	Law Development Advisor	Tom Reynders	8.625
0001-2 U.S.-Company	125	11	Law Development Advisor	Tom Reynders	3.0
0001-3 U.S.-Property	125	11	Law Development Advisor	Tom Reynders	3.125
0001-4 U.S.-Labor	125	12	Labor Law Drafting and Commentary Law Development Advisor	Don Zimmerman Tom Reynders	9.0 3.375
0001-5 Local-Finance	175	7	Local Law Development Advisor	Ramarolanto-Ratiaray	30.0
0001-6 Local-Company	175	7	Local Law Development Advisor	Ramarolanto-Ratiaray	30.0
0001-7 Local-Property	175				
0001-8 Local-Labor	175	4	Local Review of Legislation	Ramarolanto-Ratiaray	79.00
0001-9 U.S.-ADR Support	100	11	Law Development Advisor	Tom Reynders	4.1875
0001-10 U.S.-ADR Sensitization	75	11	Law Development Advisor	Tom Reynders	4.1875
0001-11 Local-ADR Association	50	7	Local Law Development Advisors	Mboara Andriarimanana Ramarolanto-Ratiaray	3.50 6.50
0001-12 Local-ADR ToT	50				
0001-13 Local Follow-Up	100				
0001-14 Local Management	25				

b. Cumulative to Date (Quarters One through Five)

CLIN #	Maximum Days	Cumulative Days
0001-1: U.S.-Finance	125	44.425
0001-2: U.S.-Company	125	51.10
0001-3: U.S.-Property	125	5.225
0001-4: U.S.-Labor	125	62.475
0001-5: Local-Finance	175	38.00
0001-6: Local-Company	175	82.25
0001-7: Local-Property	175	7.25
0001-8: Local-Labor	175	86.25
0001-9: U.S.-ADR Support	100	90.4875
0001-10: U.S.-ADR Sensitization	75	36.1875
0001-11: Local-ADR Association	50	19.75
0001-12: Local-ADR ToT	50	3.50
0001-13: Local Follow-Up	100	6.00
0001-14 : Local Management	25	6.00
Totals	1600	538.9

5. Legislation Monitoring and Tracking Tables

a. Status, Critical Dates and Events of Legislation Reviewed by ARD/Checchi

	Law/Regulation Name- English/French	Date				
		Drafting / Comment	CRDA / Other	Further Comment	NA Adoption	Official Publication
1	Arbitration Law / <i>Loi sur l'arbitrage</i>	8/98	9/98		11/11/98	12/21/98
2	Company Law / <i>Loi sur les sociétés commerciales</i>	9/98	*			
3	Tradesman's Law / <i>Loi sur le statut du commerçant</i>	8/98	9/98		8/2/99	8/16/99
4	Competition Law / <i>Loi sur la concurrence</i>	8/98	9/98			
5	Transparency Law / <i>Loi sur la transparence des entreprises</i>	8/98	9/98		8/19/99	8/30/99
6	Legal Notice for Real Property Mortgages Law / <i>Loi sur l'hypothèque judiciaire provisoire</i>	8/98	9/98		8/19/99	8/30/99
7	Commercial Registry Decree / <i>Décret sur le registre du commerce et des sociétés</i>	8/98	9/98			[1/3/00]**
8	Bankruptcy Law / <i>Loi sur les procédures collectives d'apurement des passifs</i>	4/99	***			
9	Labor Code / <i>Code du travail</i>	6/99	****			

* CRDA initial drafting completed 9/99

** Published after end of Fifth Quarter

*** CRDA to begin consideration 9/99

**** CNE continuing drafting effort

b. Business Law Reforms and ARD/Checchi Contributions

Law/Regulation Name- English/French	Purpose	Status	ARD/Checchi Activities
Arbitration Law / <i>Loi sur l'arbitrage</i>	Establishes legal framework for arbitration	Adopted and promulgated	Extensive commentary provided, notably on using UNCITRAL model law for international arbitration. Technical assistance incorporated in law.
Company Law / <i>Loi sur les sociétés commerciales</i>	Defines the legal forms of business enterprises	CRDA completed drafting process, preparing text for review by commentators	Extensive commentary provided, notably on forms of business enterprises. Extent to which technical assistance incorporated not known until text available
Tradesman's Law / <i>Statut du commerçant</i>	Defines what a business is and who may engage in business	Adopted and promulgated	Commentary on inclusion of foreign businesses and technical aspects of draft. Extent to which commentary incorporated under review.
Competition Law / <i>Loi sur la concurrence</i>	Defines fair and unfair competition practices	CRDA action completed but blocked by Ministry of Commerce	Extensive commentary aimed at liberalizing and increasing specificity.
Transparency Law / <i>Loi sur la transparence des entreprises</i>	Specifies the kinds of information that a business make available to the public	Adopted and promulgated	Minor technical suggestions. Extent to which commentary incorporated under review.
Legal Notice for Real Property Mortgages Law / <i>Loi sur l'hypothèque judiciaire provisoire</i>	Provides for public notice of liens on business property	Adopted and promulgated	Minor technical suggestions. Extent to which commentary incorporated under review.

Commercial Registry Decree / <i>Décret sur le registre du commerce et des sociétés</i>	Establishes commercial register	In force, published in Official Gazette	Minor technical suggestions. Extent to which commentary incorporated under review.
Bankruptcy Law / <i>Loi sur les procédures collectives d'apurement des passifs</i>	Establishes legal framework for commercial enterprises to declare bankruptcy	Under review by CRDA	General guidance provided on theory and best international practices. ARD/Checchi anticipates further technical assistance during the drafting process.
Labor Code / <i>Code du travail</i>	Provides comprehensive framework for labor/management relations	Being drafted by Conseil National de l'Emploi	Extensive technical assistance provided on theory and best international practices. International Labor Law Expert now on second visit to assist in preparation of final draft.

C. FINANCIAL

Contract Value	\$ 1,452,136.00
Expenditures to Date	\$ 356,048.71
Expenditures in Fifth Quarter	\$ 53,343.52

II. CTO's Comments

III. CO's Comments